

Senate Bill No. 131

Passed the Senate September 6, 2013

Secretary of the Senate

Passed the Assembly September 4, 2013

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 340.1 of the Code of Civil Procedure, relating to damages.

LEGISLATIVE COUNSEL'S DIGEST

SB 131, Beall. Damages: childhood sexual abuse: statute of limitations.

Existing law requires that an action for recovery of damages suffered as a result of childhood sexual abuse, as defined, be commenced within 8 years of the date the plaintiff attains the age of majority or within 3 years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by sexual abuse, whichever occurs later. Existing law provides that certain actions may be commenced on and after the plaintiff's 26th birthday if the person or entity against whom the action is commenced knew or had reason to know, or was otherwise on notice, of any unlawful sexual conduct by an employee, volunteer, representative, or agent, and failed to take reasonable steps, and to implement reasonable safeguards, to avoid acts of unlawful sexual conduct in the future by that person. For a period of one year commencing January 1, 2003, existing law revived certain actions that would otherwise be barred solely because the applicable statute of limitations had expired.

This bill would provide that the time limits for commencement of an action for recovery of damages suffered as a result of childhood sexual abuse shall be applied retroactively to any claim that has not been adjudicated to finality on the merits as of January 1, 2014. This bill would revive, for a period of one year, a cause of action, as specified, that would otherwise be barred by the statute of limitations as of January 1, 2014, provided that the plaintiff's 26th birthday was before January 1, 2003, and the plaintiff discovered the cause of his or her injury on or after January 1, 2004.

This bill would provide that a party shall be entitled to conduct discovery before the court may rule on a motion challenging the sufficiency of the plaintiff's showing that a person or entity knew

or had reason to know, or was otherwise on notice, of any unlawful sexual conduct and failed to take reasonable steps, and to implement reasonable safeguards, to avoid those acts in the future. This bill would specify that this entitlement shall not apply to a cause of action revived pursuant to these provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 340.1 of the Code of Civil Procedure is amended to read:

340.1. (a) In an action for recovery of damages suffered as a result of childhood sexual abuse, the time for commencement of the action shall be within eight years of the date the plaintiff attains the age of majority or within three years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse, whichever period expires later, for any of the following actions:

(1) An action against any person for committing an act of childhood sexual abuse.

(2) An action for liability against any person or entity who owed a duty of care to the plaintiff, where a wrongful or negligent act by that person or entity was a legal cause of the childhood sexual abuse that resulted in the injury to the plaintiff.

(3) An action for liability against any person or entity where an intentional act by that person or entity was a legal cause of the childhood sexual abuse that resulted in the injury to the plaintiff.

(b) (1) No action described in paragraph (2) or (3) of subdivision (a) may be commenced on or after the plaintiff's 26th birthday.

(2) This subdivision does not apply if the person or entity knew or had reason to know, or was otherwise on notice, of any unlawful sexual conduct by an employee, volunteer, representative, or agent, and failed to take reasonable steps, and to implement reasonable safeguards, to avoid acts of unlawful sexual conduct in the future by that person, including, but not limited to, preventing or avoiding placement of that person in a function or environment in which contact with children is an inherent part of that function or environment. For purposes of this subdivision, providing or

requiring counseling is not sufficient, in and of itself, to constitute a reasonable step or reasonable safeguard.

(3) Notwithstanding any other provision of law, a party shall be entitled to conduct discovery before the court may rule on a motion challenging the sufficiency of the plaintiff's showing under paragraph (2).

(c) The time limits for commencement of actions described in subdivisions (a) and (b) shall be applied retroactively to any claim that has not been adjudicated to finality on the merits as of January 1, 2014. Notwithstanding any other provision of law, any cause of action for damages described in paragraph (2) or (3) of subdivision (a) that would otherwise be barred solely by the statute of limitations as of January 1, 2014, is revived, and, in that case, a cause of action may be commenced within one year of January 1, 2014, provided that the plaintiff's 26th birthday was before January 1, 2003, and the plaintiff discovered the cause of his or her injuries on or after January 1, 2004. Paragraph (3) of subdivision (b) shall not apply to a cause of action revived pursuant to this subdivision.

(d) Subdivision (c) does not apply to either of the following:

(1) Any claim that has been litigated to finality on the merits in any court of competent jurisdiction prior to January 1, 2014. Termination of a prior action on the basis of the statute of limitations does not constitute a claim that has been litigated to finality on the merits.

(2) Any written, compromised settlement agreement that has been entered into between a plaintiff and a defendant where the plaintiff was represented by an attorney who was admitted to practice law in this state at the time of the settlement, and the plaintiff signed the agreement.

(e) "Childhood sexual abuse" as used in this section includes any act committed against the plaintiff that occurred when the plaintiff was under 18 years of age and that would have been proscribed by Section 266j of the Penal Code; Section 285 of the Penal Code; paragraph (1) or (2) of subdivision (b), or of subdivision (c), of Section 286 of the Penal Code; subdivision (a) or (b) of Section 288 of the Penal Code; paragraph (1) or (2) of subdivision (b), or of subdivision (c), of Section 288a of the Penal Code; subdivision (h), (i), or (j) of Section 289 of the Penal Code; Section 647.6 of the Penal Code; or any prior laws of this state of

similar effect at the time the act was committed. Nothing in this subdivision limits the availability of causes of action permitted under subdivision (a), including causes of action against persons or entities other than the alleged perpetrator of the abuse.

(f) Nothing in this section shall be construed to alter the otherwise applicable burden of proof, as defined in Section 115 of the Evidence Code, that a plaintiff has in a civil action subject to this section.

(g) Every plaintiff 26 years of age or older at the time the action is filed shall file certificates of merit as specified in subdivision (h).

(h) Certificates of merit shall be executed by the attorney for the plaintiff and by a licensed mental health practitioner selected by the plaintiff declaring, respectively, as follows, setting forth the facts that support the declaration:

(1) That the attorney has reviewed the facts of the case, that the attorney has consulted with at least one mental health practitioner who is licensed to practice and practices in this state and who the attorney reasonably believes is knowledgeable of the relevant facts and issues involved in the particular action, and that the attorney has concluded on the basis of that review and consultation that there is reasonable and meritorious cause for the filing of the action. The person consulted may not be a party to the litigation.

(2) That the mental health practitioner consulted is licensed to practice and practices in this state and is not a party to the action, that the practitioner is not treating and has not treated the plaintiff, and that the practitioner has interviewed the plaintiff and is knowledgeable of the relevant facts and issues involved in the particular action, and has concluded, on the basis of his or her knowledge of the facts and issues, that in his or her professional opinion there is a reasonable basis to believe that the plaintiff had been subject to childhood sexual abuse.

(3) That the attorney was unable to obtain the consultation required by paragraph (1) because a statute of limitations would impair the action and that the certificates required by paragraphs (1) and (2) could not be obtained before the impairment of the action. If a certificate is executed pursuant to this paragraph, the certificates required by paragraphs (1) and (2) shall be filed within 60 days after filing the complaint.

(i) Where certificates are required pursuant to subdivision (g), the attorney for the plaintiff shall execute a separate certificate of merit for each defendant named in the complaint.

(j) In any action subject to subdivision (g), no defendant may be served, and the duty to serve a defendant with process does not attach, until the court has reviewed the certificates of merit filed pursuant to subdivision (h) with respect to that defendant, and has found, in camera, based solely on those certificates of merit, that there is reasonable and meritorious cause for the filing of the action against that defendant. At that time, the duty to serve that defendant with process shall attach.

(k) A violation of this section may constitute unprofessional conduct and may be the grounds for discipline against the attorney.

(l) The failure to file certificates in accordance with this section shall be grounds for a demurrer pursuant to Section 430.10 or a motion to strike pursuant to Section 435.

(m) In any action subject to subdivision (g), no defendant may be named except by “Doe” designation in any pleadings or papers filed in the action until there has been a showing of corroborative fact as to the charging allegations against that defendant.

(n) At any time after the action is filed, the plaintiff may apply to the court for permission to amend the complaint to substitute the name of the defendant or defendants for the fictitious designation, as follows:

(1) The application shall be accompanied by a certificate of corroborative fact executed by the attorney for the plaintiff. The certificate shall declare that the attorney has discovered one or more facts corroborative of one or more of the charging allegations against a defendant or defendants, and shall set forth in clear and concise terms the nature and substance of the corroborative fact. If the corroborative fact is evidenced by the statement of a witness or the contents of a document, the certificate shall declare that the attorney has personal knowledge of the statement of the witness or of the contents of the document, and the identity and location of the witness or document shall be included in the certificate. For purposes of this section, a fact is corroborative of an allegation if it confirms or supports the allegation. The opinion of any mental health practitioner concerning the plaintiff shall not constitute a corroborative fact for purposes of this section.

(2) Where the application to name a defendant is made prior to that defendant's appearance in the action, neither the application nor the certificate of corroborative fact by the attorney shall be served on the defendant or defendants, nor on any other party or their counsel of record.

(3) Where the application to name a defendant is made after that defendant's appearance in the action, the application shall be served on all parties and proof of service provided to the court, but the certificate of corroborative fact by the attorney shall not be served on any party or their counsel of record.

(o) The court shall review the application and the certificate of corroborative fact in camera and, based solely on the certificate and any reasonable inferences to be drawn from the certificate, shall, if one or more facts corroborative of one or more of the charging allegations against a defendant has been shown, order that the complaint may be amended to substitute the name of the defendant or defendants.

(p) The court shall keep under seal and confidential from the public and all parties to the litigation, other than the plaintiff, any and all certificates of corroborative fact filed pursuant to subdivision (n).

(q) Upon the favorable conclusion of the litigation with respect to any defendant for whom a certificate of merit was filed or for whom a certificate of merit should have been filed pursuant to this section, the court may, upon the motion of a party or upon the court's own motion, verify compliance with this section by requiring the attorney for the plaintiff who was required by subdivision (h) to execute the certificate to reveal the name, address, and telephone number of the person or persons consulted with pursuant to subdivision (h) that were relied upon by the attorney in preparation of the certificate of merit. The name, address, and telephone number shall be disclosed to the trial judge in camera and in the absence of the moving party. If the court finds there has been a failure to comply with this section, the court may order a party, a party's attorney, or both, to pay any reasonable expenses, including attorney's fees, incurred by the defendant for whom a certificate of merit should have been filed.

(r) The amendments to this section enacted at the 1990 portion of the 1989–90 Regular Session shall apply to any action commenced on or after January 1, 1991, including any action

otherwise barred by the period of limitations in effect prior to January 1, 1991, thereby reviving those causes of action which had lapsed or technically expired under the law existing prior to January 1, 1991.

(s) The Legislature declares that it is the intent of the Legislature, in enacting the amendments to this section enacted at the 1994 portion of the 1993–94 Regular Session, that the express language of revival added to this section by those amendments shall apply to any action commenced on or after January 1, 1991.

(t) Nothing in the amendments to this section enacted at the 1998 portion of the 1997–98 Regular Session is intended to create a new theory of liability.

(u) The amendments to subdivision (a) of this section, enacted at the 1998 portion of the 1997–98 Regular Session, shall apply to any action commenced on or after January 1, 1999, and to any action filed prior to January 1, 1999, and still pending on that date, including any action or causes of action which would have been barred by the laws in effect prior to January 1, 1999. Nothing in this subdivision is intended to revive actions or causes of action as to which there has been a final adjudication prior to January 1, 1999.

Approved _____, 2013

Governor